

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Joint Petition of Heron
Lake BioEnergy, LLC and Federated Rural
Electric Association to Serve Heron Lake
BioEnergy Ethanol Plant

**FIRST PREHEARING
ORDER**

This matter came on for a Prehearing Conference before Administrative Law Judge Barbara L. Neilson by telephone conference call on February 3, 2006.

Harold LeVander, Jr., Attorney at Law, Felhaber, Larson, Fenlon & Vogt, 444 Cedar Street, Suite 2100, St. Paul, MN 55101-2136, appeared on behalf of Federated Rural Electric Association.

Jennifer S. Moore, Regulatory Attorney, 200 First Street S.E., P.O. Box 351, Cedar Rapids, IA 52406-0351, appeared on behalf of Interstate Power and Light Company.

Stuart Mitchell, Public Utilities Analyst, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, MN 55101-2147, appeared for the staff of the Public Utilities Commission.

Based on the discussions during the Prehearing Conference, and all of the files and proceedings herein, the Administrative Law Judge makes the following:

ORDER

Parties and Petitions for Intervention

1. The Commission's Notice and Order for Hearing dated January 18, 2006, identified the parties to this matter as Heron Lake BioEnergy, Federated Rural Electric Association, Interstate Power and Light Company, and the Minnesota Department of Commerce. The Minnesota Department of Commerce notified the Administrative Law Judge by letter dated January 23, 2006, that it does not intend to participate in this matter.

2. The final date for filing Petitions to Intervene is **February 24, 2006**. Any objection to a Petition to Intervene shall be filed within seven days of service of the petition, in accordance with Minn. R. 1400.6200, subp. 2. Any person who is not affiliated with a party or a participant will be removed from the service list after that date.

Schedule

3. The following schedule proposed by counsel for Federated Rural Electric Association and Interstate Power and Light Company is adopted:

Discovery Demands	On-going
Discovery Responses	March 10, 2006
Prefiled Direct Testimony	April 7, 2006
Prefiled Rebuttal Testimony	April 27, 2006
Prefiled Surrebuttal Testimony	May 8, 2006
Second Prehearing Conference (by telephone conference call)	May 24, 2006, 2:30 p.m.
Evidentiary Hearings (location to be determined)	May 31 – June 2, 2006

4. The parties shall submit briefs and are encouraged to submit proposed Findings of Fact and Conclusions, all appropriately referencing the official record, at such times after the close of the evidentiary hearings as shall be directed by the Administrative Law Judge.

5. At the present time, no public hearings are expected to be held in this matter.

Filing of Documents

6. Prefiled testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier.

7. All documents, including prefiled testimony but **excluding information requests and responses**, shall be filed as follows:

- A. Before the Report of the Administrative Law Judge is issued, the original document and one copy either shall be delivered or sent by both e-mail and U.S. mail to:

Barbara L. Neilson
Administrative Law Judge
Office of Administrative Hearings
100 Washington Avenue South, Suite 1700
Minneapolis, MN 55401-2138
barbara.neilson@state.mn.us

- B. After the Administrative Law Judge's report is issued, the parties shall file the original of all documents with the Executive Secretary of the Commission, at the address indicated on the attached service list.
- C. Copies of all documents shall be served on the persons listed on the attached service list, in the number indicated. It is expected that service will be made by sending both an electronic copy to the e-mail addresses listed on the service list and a paper copy by U.S. mail. Service shall be made according to the most current service list provided to the parties by the Office of Administrative Hearings.
- D. Pursuant to Minn. R. 1400.5100, subp. 9, and Minn. R. 7829.0400, subp. 1, the effective date of filing shall be the date the document is mailed or delivered to the Office of Administrative Hearings and the date the document is delivered to the Executive Secretary of the Commission.
- E. Proof of service shall be filed with each filed document or within three business days thereafter.
- F. An electronic copy of prefiled testimony shall be served on the other parties and the court reporter by 4:00 p.m. on the day it is due.
- G. The court reporter shall be informed of any motions or matters affecting the schedule in this matter.

Discovery

8. A party may serve requests for information on any other party. All requests for information shall be made in writing by e-mail to the person from whom the information is sought with a copy of the request mailed to all parties of record, and the requesting party shall follow the e-mail with a copy of the request sent by regular U.S. mail or other delivery service to all parties.

9. The party responding to the information request shall provide the information requested to the requesting party within ten days from the date of the request. Any request received by e-mail after 4:30 p.m. on a business day, weekend day, or state holiday is considered received on the next business day. In accordance with Minn. R. 1400.6100, subp. 1, the day that the information request is received is not counted in the ten-day period. If the ten-day period ends on a weekend day or state holiday, the response shall be due on the next business day. The responsive information need not be supplied to other parties unless specifically requested by a party.

10. **No requests for information or responses to information requests shall be provided to the Administrative Law Judge or the Court Reporter unless a dispute arises with respect to the request or response.**

11. To the extent that an information request or response includes material designated as Trade Secret or Nonpublic Data under the Minnesota Government Data Practices Act, Chapter 13 of the Minnesota Statutes, the request or response is required only between the requesting and responding party. In such instances, the party providing the Trade Secret Information or Nonpublic Data may require that the other party comply with the terms of any Protective Agreement or Protective Order that may be entered in this matter before providing the information.

12. If the responding party is unable to send the response by e-mail due to the volume or nature of the information included in a response, the responding party shall send the response by facsimile, regular U.S. mail, or other delivery service so that the requesting party receives the entire response by the date due, including any material designated as Trade Secret Information or Nonpublic Data.

13. In the event the information cannot be supplied within the ten-day period, the responding party shall notify the requesting party, in writing, as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply the information and the parties shall attempt to work out a satisfactory response schedule. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon motion of a party.

14. Further discovery may be conducted in accordance with Minn. R. 1400.6700 – 1400.6950.

Prefiled Testimony

15. Prefiled testimony shall be marked with exhibit numbers and offered into the record. Prefiled testimony that is amended, or is not offered into the record, shall be considered withdrawn and the sponsoring witness may not be cross-examined concerning the withdrawn testimony. Except for good cause shown, all substantive revisions or corrections to any prefiled testimony shall be made in writing and filed with the Administrative Law Judge and served upon the parties no later than five days prior to the commencement of the evidentiary hearing.

16. Except for good cause shown, any new affirmative matter that is not offered in reply to another party's direct case shall not be offered in rebuttal or surrebuttal testimony and exhibits.

Examination of Witnesses

17. Witnesses shall be allowed ten minutes to summarize their prefiled testimony. For good cause shown, witnesses will be permitted to respond to any new matters not addressed in prefiled testimony through direct examination by counsel.

18. Except for good cause shown, objections by any party relating to the qualifications of a witness or the admissibility of any portion of a witness's prefiled testimony shall be considered waived unless the objecting party states its objection by written motion made to the Administrative Law Judge and serves a copy of such objections on the parties no later than five days prior to commencement of the hearing. If an objection is made by a party, the party shall be permitted to lay further foundation for the objection through cross-examination of the witness. Any prefiled testimony that is not objected to shall be admitted during the evidentiary hearings without the necessity of laying foundation for the testimony.

Hearing Procedure and Location

19. The Administrative Procedure Act, Minn. Stat. §§ 14.57 – 14.62, and the Rules of the Office of Administrative Hearings, Minn. R. 1400.5100 – 1400.8400, shall govern the conduct of the hearings in this matter. The Professionalism Aspirations adopted by the Minnesota Supreme Court will be observed. To the extent that they are not superseded by the OAH rules, the Commissioner's Rules of Practice and Procedure, Minn. R. 7829.0100 to 7829.3200, shall also apply.

20. The parties shall inform the Administrative Law Judge by March 1, 2006, of their preference regarding the hearing location.

Date: February 13, 2006

s/Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge